

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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VERIFIED COMPLAINT

A.M. mother and natural guardian of R.S. and
R.S. Individually,

Case No.: 21-cv-5191

Plaintiff,

-against-

THE CITY OF NEW YORK & NEW YORK CITY
DEPARTMENT OF EDUCATION,

Defendants.

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PRELIMINARY STATEMENT

1. A.M. (hereinafter “plaintiff”) is the mother and natural guardian of R.S., a minor.
2. During the relevant dates referenced herein, the plaintiffs have resided in Maspeth, New York. Maspeth is located in the borough of Queens, in the City and State of New York.
3. The defendants, the City of New York (hereinafter “City”) and the New York City Department of Education (hereinafter “DOE”) are municipal entities duly existing by virtue of the law of the City and State of New York.
4. The within action is brought to recover attorney’s fees arising out of special education due process proceedings resolved in favor of the plaintiff in all material respects by the order of IHO (hereinafter “IHO”) in impartial hearing case number 187262. The decision was rendered on June 7, 2020.
5. Plaintiff prevailed in all material respects in the impartial hearing proceeding which is the subject of this action.

6. The defendants City and DOE did not appeal the decision rendered in the due process proceedings, and as such, the determination is final and binding on these defendants.

7. The plaintiff is a prevailing party in the above-mentioned due process proceedings and to date, the claim for legal fees has yet to be settled by defendants.

8. The within action is brought within the statute of limitations and is timely.

JURISDICTION AND VENUE

9. Jurisdiction is conferred upon this Court by the Individuals with Disabilities in Education Act (IDEA) at 20 U.S.C. §1400 et. seq., and more specifically 20 U.S.C. 1415(i)(3)(B).

10. Pursuant to 20 U.S.C. §1391(b) venue is proper in the United States District Court of New York, Eastern District.

STATEMENT OF FACTS

11. On August 19, 2019, a 10-day notice of unilateral placement was filed with the DOE notifying it that the plaintiff A.M. would be unilaterally placing R.S. Thereafter, an impartial hearing complaint was filed alleging that defendants failed to provide FAPE to R.S. on or about September 4, 2019.

12. During the impartial hearing proceedings, the defendants' DOE District Representative claimed that FAPE was provided to R.S. in the complained of school year(s). The DOE claimed that plaintiff was not cooperative with the DOE during the 2018-2019 school year, and further, offered no testimonial evidence into the record to establish that FAPE was provided as to any of its claims for the school year(s) alleged in the impartial hearing complaint.

13. The IHO found that the infant R.S. was denied FAPE in the complained of school year(s) and that the defendant(s) were required to fund his unilateral placement for the 2019-

2020 school year. The IHO further ordered that the defendant(s) were required to reimburse plaintiff for R.S.'s transportation to and from school and fund five hundred (500) hours of compensatory tutoring at the rate of \$125 per hour.

~~14~~. The plaintiff has exhausted all necessary administrative remedies prior to bringing this action for attorneys fees as a prevailing party.

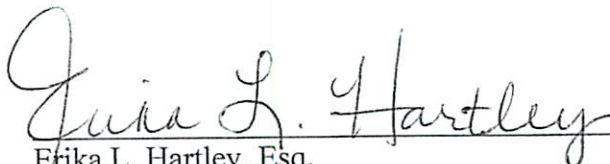
15. The plaintiff is a prevailing party in the underlying due process proceedings pursuant to 20 U.S.C. §1415(i)(3)(B). Plaintiff obtained favorable results in the underlying due process proceedings that were not occasioned by the defendant City's of DOE's voluntary change of conduct, but rather, was based on the determinations made in the impartial hearing decision by the IHO.

16. As plaintiff is a prevailing party in the underlying due process proceedings which are the subject of the instant litigation, legal fees should be awarded.

REQUESTS FOR RELIEF

17. The plaintiff, as a prevailing party in the underlying due process proceedings involving the defendants, requests that an award be issued in her favor for the costs of prosecuting and bringing this action, reasonable attorneys fees which have or will be incurred in the prosecution of this action and attorneys fees which have been incurred in the exhaustion of administrative remedies in the proceedings below pursuant to 20 U.S.C. §1415(i)(3)(B).

Dated: Brooklyn, New York
August 13, 2021


Erika L. Hartley, Esq.
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C.H. as m/n/g of C.W.
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To: GEORGIA M. PESTANA, ESQ.
Corporation Counsel of the City of New York
Office of the Corporation Counsel
Attorneys for Defendants
THE CITY OF NEW YORK & NEW YORK CITY
DEPARTMENT OF EDUCATION
100 Church Street
New York, New York 10007


PLAINTIFF VERIFICATION

A.M. being duly sworn, deposes and states the following:

1. That I am the plaintiff in this federal court action.
2. I have read the verified complaint and know the contents thereof.
2. The allegations made in the verified complaint are based upon matters of which I

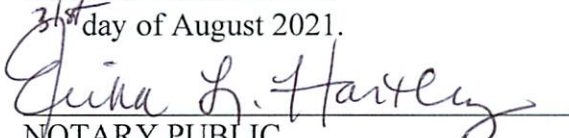
have personal knowledge as to their truth, except as to those matters alleged upon information and belief, and as to those matters I believe them to be true.

Dated: New York, New York
August 13, 2021



A.M.

Sworn to before me this
3rd day of August 2021.



NOTARY PUBLIC

ERIKA L. HARTLEY
NOTARY PUBLIC-STATE OF NEW YORK
No. 02HA6083023
Qualified in Kings County
My Commission Expires 12-14-20__

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LAW OFFICE OF ERIKA L. HARTLEY

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